



Federal Communications Commission
Washington, D.C. 20554

April 11, 2017

Warren Havens
2649 Benvenue Avenue
Berkeley, CA 94707

Dear Mr. Havens:

This letter responds to your request¹ for a declaratory ruling concerning the obligations of co-channel site-based Automated Maritime Telecommunication System (AMTS) licensees under section 80.385(b)(1) of the Commission's rules.² You seek a declaratory ruling that the holding of the United States Court of Appeals for the Third Circuit in *Havens v. Mobex Network Service, LLC*, which held that the Commission's rules do not impose an affirmative obligation on a site-based AMTS licensee to provide its technical information to a co-channel AMTS geographic licensee,³ is incorrect.⁴ For the reasons set forth below, we deny the request.

Pursuant to section 80.385(b)(1), AMTS geographic licensees are required to locate their base stations at least 120 kilometers from the base stations of co-channel site-based incumbents, but the Commission will consider shorter separations on a case-by-case basis if the proposed operations provide at least 18 dB protection to the site-based incumbent's predicted 38 dBu signal contour.⁵ A site-based incumbent station's predicted 38 dBu signal contour depends in part on its effective radiated power (ERP),⁶ but the power limit for site-based AMTS stations in the rules and on their licenses is based on transmitter output power rather than ERP.⁷ Consequently, determining a station's ERP requires additional information, such as antenna gain and line loss.

We have stated that we "expect incumbent AMTS licensees 'to cooperate with geographic licensees in order to avoid and resolve interference issues. This includes, at a minimum, providing upon request sufficient information to enable geographic licensees to calculate the site-based station's protected contour,'" and if "the site-based incumbent is unable

¹ Motion for declaratory ruling under §§ 1.2 and 1.41 (filed Sept. 25, 2016) (Request). The Request was filed by Warren Havens individually and Polaris PNT, PBC.

² 47 CFR § 80.385(b)(1).

³ See *Havens v. Mobex Network Services, LLC*, 820 F.3d 80 (3rd Cir. 2016), *cert. denied*, 137 S. Ct. 496 (2016).

⁴ See Request at 2-3.

⁵ 47 C.F.R. § 80.385(b)(1); see *Amendment of the Commission's Rules Concerning Maritime Communications*, Third Memorandum Opinion and Order, 18 FCC Rcd 24391, 24394, para. 7 (2003).

⁶ See 47 CFR § 80.765.

⁷ See 47 CFR § 80.215(h)(5).

⁸ *Dennis C. Brown, Esq.*, Letter Order, 24 FCC Rcd 4135, 4136, n.9 (WTB MD 2009) (quoting *Northeast Utilities Service Co.*, Order, 24 FCC Rcd 3310, 3311, n.12 (WTB MD 2009) (*Northeast Utilities*), *subsequent history omitted*).

or unwilling to provide this information, a geographic licensee must make assumptions about the site-based station's technical parameters, and explain those assumptions in the technical analysis accompanying its application to modify its license to add locations within 120 kilometers of a licensed co-channel site-based incumbent station.”⁹

In litigation between an AMTS geographic licensee and a co-channel site-based incumbent, the Third Circuit reviewed the Commission's rule and the relevant precedent, and concluded that they do not impose an affirmative obligation on AMTS site-based incumbents to provide technical information to co-channel geographic licensees.¹⁰ In light of the precedent discussed above, the Third Circuit is correct. Section 1.2 of the Commission's rules provides that we may “issue a declaratory ruling terminating a controversy or removing uncertainty.”¹¹ Because there is no controversy to terminate or uncertainty to remove regarding site-based AMTS incumbents' obligations to provide technical information to co-channel AMTS geographic licensees, we deny your request.¹²

Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.2 of the Commission's Rules, 47 CFR § 1.2, the Motion for declaratory ruling under §§ 1.2 and 1.41 filed by Warren Havens and Polaris PNT, PBC, on September 25, 2016, IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

⁹ *Warren C. Havens*, Letter Order, 28 FCC Rcd 8456, 8456 (WTB MD 2013) (citing *Northeast Utilities*, 24 FCC Rcd at 3311, para. 3).

¹⁰ *See Havens v. Mobex Network Services, LLC*, 820 F.3d at 88-89.

¹¹ 47 CFR § 1.2(a).

¹² *See, e.g., Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5855, para. 11 (2009); *James Edwin Whedbee*, Letter Order, 27 FCC Rcd 4920, 4921 (WTB MD 2012).